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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,708	08/31/2001	Thomas Joseph Kelly	13DV14047	1769

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EXAMINER

JIMENEZ, MARC QUEMUEL

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/944,708		<b>Applicant(s)</b> KELLY ET AL.	
	<b>Examiner</b> Marc Jimenez		<b>Art Unit</b> 3726	
	-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on \_\_\_\_.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) \_\_\_\_ is/are pending in the application.

4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-5 and 8-11 is/are rejected.

7) ☒ Claim(s) 6, 7, 12 and 13 is/are objected to.

8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
     1. ☐ Certified copies of the priority documents have been received.  
     2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
     3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> .	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other:
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**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-5 and 8-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt (4,323,186) in view of King et al. (4,337,886).

Hunt teaches a method of manufacturing a welding filler metal (col. 1, lines 40-43), comprising the steps of: casting (col. 2, line 9) a nickel-base alloy (col. 4, lines 15-16) as an extrusion rod having a diameter from about 0.2 inch to about 0.5 inch (col. 5, line 48 and col. 2, line 25, Hunt specifically gives examples of .18 inch and 0.225 inch), the extrusion rod having grains in the cross section of the extrusion rod, and extruding the extrusion rod in a single extrusion operation (see figure and col. 5, lines 9-11) to a filler-metal diameter of less than about 0.1 inch (col. 2, line 66, Hunt specifically teaches a diameter of less than 0.07 inch) and using an areal extrusion ratio of at least about 9:1 (col. 7, lines 28-31) to form the welding filler metal.

Hunt teaches the invention cited above with the exception of having at least about 12 grains in the cross section of the extrusion rod.

King et al. teach at least about 12 grains **12,12a** in the cross section of an extrusion rod.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Hunt with at least about 12 grains in the cross section of the extrusion rod, in light of the teachings of King et al., in order to increase the malleability of the rod (as suggested by King et al. at col. 1, lines 56-60).

With respect to Claims 3 and 11, Hunt/King et al. teach the invention cited above with the exception of using the claimed materials.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have selected the claimed material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

#### ***Allowable Subject Matter***

3. **Claims 6, 7, 12, and 13** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Contact Information***

4. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining

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groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number is **703-306-5965**. The examiner can normally be reached on **Monday-Thursday and the second Friday of the bi-week, between 9am-6pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 308-6789 or (888) 786-0101
Assignment Branch	(703) 308-9723
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Petitions/Special Programs	(703) 305-9285
Terminal Disclaimers	(703) 305-8408
PCT Help Desk	(703) 305-3257

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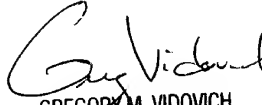
If the information desired is not provided above, or a number has been changed, please call the general information help line below.

Information Help line  
Internet PTO-Home Page

1-800-786-9199  
<http://www.uspto.gov/>

  
MJ

November 30, 2002

  
GREGORY M. VIDOVICH  
PRIMARY EXAMINER